IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

OP.No. 36517 of 2000(V)

PETITIONER:

VICTOR T.THOMAS,
MULAMOOTTIL THUNDIATHU,
KOZHANCHERY.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR
SRI.LIJU.V.STEPHEN

RESPONDENTS:
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1. **STATE OF KERALA, REP.BY THE**
CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. **JANARDHANAN**
CIRCLE INSPECTOR OF POLICE
PATHANAMTHITTA DISTRICT.

3. **KRISHNANKUTTY,**
ASSISTANT SUB INSPECTOR
PATHANAMTHITTA DISTRICT.

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN
SRI.REJI MATHEW KAVALAYIL

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.36517/2000

ORDER ON CMP. NO.62130/2000 IN OP. NO.36517/2000

CLOSED

20.07.2007 **SD/- T.R.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE SCANING REPORT OF THE PETITIONER IN THE MUTHOOT MEDICAL CENTRE DT. 27.12.99. CT.NO.8301.

EXT.P2:- COPY OF THE MEDICAL CERTIFICATE ISSUED FROM THE DEPARTMENT OF NEURO SURGERY DT. 27.10.2000,.

EXT.P3:- COPY OF THE DISCHARGE CARD FROM THE MEDICAL COLLEGE, KOTTAYAM DT. 23.12.99.

EXT.P4:- COPY OF THE DISCHARGE CERTIFICATE FROM THE MUTHOOT MEDICAL CENTRE DT. 31.12.99.

EXT.P5:- COPY OF THE REPORT IN MALAYALA , MANORAMA DT.21.12.99.

EXT.P6:- COPY OF THE REPORT CAME IN MALAYALA MANORAMA DT. 19.12.99.

EXT.P7:- COPY OF THE NOTICE ISSUED BY THE PETITIONER'S LAWYER TO THE RESPONDENTS DT. 30.5.2000.

/TRUE COPY/

P.A. TO JUDGE

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 36517 of 2000 (V)

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Dated this the 20th day of July, 2007

J U D G M E N T

This original petition is filed by the petitioner seeking for the issuance of a writ of mandamus or other appropriate writ direction or order directing the respondents to pay a sum of rupees ten lakhs towards compensation for injuries caused by respondents 2 and 3 on the petitioner. The short facts are the following.

2. The petitioner is a political and social worker and was the President of the youth wing of Kerala Congress (M) at the time of filing of the original petition. On 18/12/1999, under his leadership, a dharna was conducted in front of the employment exchange at Pathanamthitta. The case of the petitioner is that while the petitioner was delivering his speech, the second respondent without any provocation asked the petitioner to stop the same and simultaneously, forcibly removed the microphone from his hand. Thereafter, without any provocation, he beat the

petitioner with a lathi on his head causing severe injury to his head and there was profused bleeding. It is the case of the petitioner that he was tortured without any reason and had to be taken to the General Hospital of Pathanamthitta District from where he was referred to the Medical College Hospital, Kottayam. There he was treated as an inpatient from 19/12/1999 to 23/12/1999. After his discharge from the Medical College Hospital, he was admitted in the Muthoot Medical Centre, Kozhanchery, wherein he was under treatment from 24/12/1999 to 31/12/1999 and from there he was referred to the Medical College Hospital, Thiruvananthapuram. Ext.P1 is the scan report and Ext.P2 is the medical certificate issued from the Medical College Hospital, Thiruvananthapuram. Exts.P3 and P4 represents the discharge certificate issued from Medical College Hospital, Kottayam and Muthoot Medical Centre, Kozhanchery. Exts.P5 and P6 are the press reports relied on by the petitioner to prove that the said incident had occurred on that day.

3. According to the petitioner, he has issued a lawyer notice to the Chief Secretary and others, produced as Ext.P7, demanding a sum of Rs.10 lakhs as compensation.

4. The respondents have filed a counter affidavit. It is stated that a case as Crime No.932/99 under Sections 143, 147, 148, 149, 332 of the Indian Penal Code and Section 3(2)(e) of the P.D.P.P Act 1984 has been registered in Pathanamthitta Police Station by the second respondent. The accused were the office bearers and workers of Kerala Youth Front (M). It is stated that while conducting the dharna in front of the District Employment Exchange Office at Pathanamthitta, on 18/12/1999, at 11 a.m., it became violent and the participants resorted to hurling of stones at police personnel on duty and also the office building of the employment exchange. It is stated that one Assistant Sub Inspector and certain other police constables had sustained injuries and that the office building was also damaged in that incident. The petitioner is the second accused in the above case. He was arrested along with five other accused and thereafter

they were admitted in the General Hospital, Pathanamthitta, by the police at their request. Subsequently, they were remanded to judicial custody as ordered by the Chief Judicial Magistrate Court, Pathanamthitta.

5. This is a case where the petitioner seeks compensation from the respondents based on the personal injury sustained by him. The same can be established only by adducing evidence through witnesses and other means. Since the respondents are not admitting the claim and are disputing the liability to pay compensation, this Court while exercising the jurisdiction under Article 226 of the Constitution of India will not be able to enter findings of such disputed questions of fact, that too in the absence of proven evidence. Even though the Hon'ble Supreme Court has held in various decisions about the principles to be adopted for granting monetary compensation in a petition under Article 226 of the Constitution of India, (See 2006 (3) SCC 178), I am not satisfied that this is a fit case to adopt the said principles. This case is not one where there is any violation of

the fundamental rights guaranteed under the Constitution. Essentially, it was a case where a dharna was being conducted and violent incidents followed which resulted in claiming the compensation in this writ petition. Therefore, the original petition is dismissed without prejudice to the right of the petitioner to seek for appropriate reliefs before the competent court/forum.

T.R.RAMACHANDRAN NAIR,
Judge

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 36517 of 2000 (V)

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J U D G M E N T

20th July, 2007